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Name: Gregory S. Shaffer**JUDICIAL SELECTION COMMISSION****Application for Judicial Vacancy on the First Judicial District Court
APPLICATION****PERSONAL**

| | | | | |
|---|---|----------|-------|-------|
| 1. Full Name | Gregory Scott Shaffer | | | |
| 2. County of Residence | Santa Fe County | | | |
| 3. Birthplace | Somerset PA | | | |
| 4. If born outside the US, give the basis for your citizenship | N/A | | | |
| 5. Birth Date | [REDACTED] 1972 | | | |
| 6. Marital Status | Married | | | |
| 7. If married, list spouse's full name | Jessica Beth Cooper | | | |
| 8. Spouse's occupation | Supervising Administrative Law Judge for the New Mexico State Personnel Board | | | |
| 9. Do you have any other familial relationships that might present conflicts if you were to be seated as a judge? If so, please explain these relationships and how you would address any conflicts. | | | | |
| Answer 9: No. | | | | |
| 10. List all places of residence, city and state, and approximate dates for the last 10 years | | | | |
| Date(s) of Residence | Street Address | City | State | Zip |
| 6/2016 to Present | 10 Arroyo Canyon Rd. | Santa Fe | NM | 87508 |
| 6/2005 to 6/2016 | 2 Horse Peak | Santa Fe | NM | 87508 |

EDUCATION

| | |
|--|--|
| 11. List schools attended with dates and degrees (including all post-graduate work) | |
| High School(s) | Somerset Area High School, from 8/1987 to 5/1990. Diploma. |
| College(s) | Pennsylvania State University, from 5/1990 to 5/1994. B.A. (with <i>High Distinction</i> (top 7% of class) and Phi Beta Kappa) |
| Law School(s) | New York University, from 8/1994 to 5/1997. J.D. (<i>cum laude</i>) |

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|-------------------------------------|---|
| 12. Bar Admissions and Dates | New York State – 1998 Supreme Court, Appellate Division Second Department |
| | U.S. District Court, Southern District of New York – 1999 |
| | U.S. District Court, Eastern District of New York – 2000 |
| | New Mexico State – 2004 |
| | U.S. District Court, District of New Mexico – 2005 |

EMPLOYMENT**13. List Your Present Employment**

| | |
|-----------------------|--|
| Date(s) of Employment | 5/2014 to Present |
| Employer | Santa Fe County |
| Mailing Address | 102 Grant Ave Santa Fe NM 87501-2061 |
| Business Phone | 505.986.6200 |
| Position | County Attorney |
| Duties | <p>Counsel elected officials, department heads, and staff on diverse legal matters, such as election law; jail operations; employment and labor law; land use regulation; contract disputes with Local Economic Development Act grant recipient, other governmental entities, and vendors; local option gross receipts taxes; insurance coverage issues; the Open Meetings Act, and the Inspection of Public Records Act.</p> <p>Represent County, elected officials, and staff in litigation, and oversee outside counsel representing County in litigation. Litigation matters include claims brought under the Whistleblower Protection Act, Tort Claims Act, 42 U.S.C. Section 1983, and treatment guardian petitions. Draft ordinances, regulations, contracts, and policies. Supervise a team of five lawyers and three support staff.</p> |
| Supervisor | Katherine Miller, County Manager |

14. List Your Previous Employment (beginning with most recent)****I have listed my previous employment from the age of 18 to the present.**

| | |
|--------------------------|---|
| Dates of Employment | 10/2010 to 5/2014 – General Counsel 8/2006 to 10/2007; 1/2008 to 11/2010 – Assistant General Counsel |
| Employer | New Mexico Department of Finance and Administration |
| Mailing Address | 180 Bataan Memorial Building Santa Fe NM 87501 |
| Business Phone | 505.827.4985 |
| Business FAX | 505.827.4984 |
| Employer's Email Address | Julia.Ruetten@state.nm.us |
| Position | Assistant General Counsel and General Counsel |

| | |
|--------------------------|---|
| Dates of Employment | 10/2007 to 1/2008 |
| Employer | New Mexico Taxation and Revenue Department |
| Mailing Address | 1100 South St. Francis Drive Santa Fe NM 87504 |
| Business Phone | 505.827.0341 |
| Business FAX | 505.827.0684 |
| Employer's Email Address | tonya.herring@state.nm.us |
| Position | Deputy Chief Counsel |

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|---------------------|---|
| Dates of Employment | 5/2004 to 8/2006 |
| Employer | Santa Fe County |
| Mailing Address | 102 Grant Ave Santa Fe NM 87501-2061 |

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|--------------------------|-----------------------------|
| Business Phone | 505.986.6200 |
| Business FAX | 505.995.2740 |
| Employer's Email Address | kmiller@santafecountynm.gov |
| Position | Assistant County Attorney |

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|--------------------------|--|
| Dates of Employment | 11/2003 to 1/2004 |
| Employer | Hoguet Newman & Regal, LLP* *Work was performed for Hoguet Newman & Regal, LLP. As a contract litigation attorney, my technical employer was Administaff Companies II, L.P. 19001 Crescent Springs Drive Kingwood TX 77339. |
| Mailing Address | 10 East 40th Street New York NY 10016-0301 |
| Business Phone | 212.689.8808 |
| Business FAX | 212.689.5101 |
| Employer's Email Address | fnewman@hnrklaw.com |
| Position | Contract Litigation Attorney |

| | |
|--------------------------|--|
| Dates of Employment | 5/1996 to 8/1996; 9/1997 to 2/2003 |
| Employer | Kirkpatrick & Lockhart LLP (n/k/a K&L Gates) |
| Mailing Address | 599 Lexington Avenue New York NY 10022-6030 |
| Business Phone | 212.536.3900 |
| Business FAX | 212.536.3901 |
| Employer's Email Address | John.Vaughan@klgates.com |
| Position | Litigation Associate |

| | |
|--------------------------|--|
| Dates of Employment | 5/95 to 8/95 |
| Employer | Pennsylvania Court of Common Pleas, 16 th Judicial District* *This was an unpaid summer clerkship, for which records may not exist. In addition, the two judges for whom I clerked are retired. Consequently, I am separately submitting with my application the affidavit of Eugene E. Fike, II, President Judge at the time of my clerkship, submitted with my application for admission to the New York State Bar, Supreme Court, Appellate Division, Second Department, in 1998. I am doing so to allow the Judicial Nominating Commission to easily confirm this clerkship. |
| Mailing Address | Somerset County Courthouse 111 East Union St. Somerset PA 15501 |
| Business Phone | 814.445.1473 |
| Business FAX | 814.445.1455 |
| Employer's Email Address | Unknown |
| Position | Unpaid Summer Clerk |

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|---------------------|--|
| Dates of Employment | 5/1993 to 9/1993; 5/1994 to 8/1994 |
| Employer | Pennsylvania Department of Environmental Resources |

| | |
|--------------------------|--|
| Mailing Address | 1454 Laurel Hill Park Road Somerset PA 15501-5629 |
| Business Phone | 814.445.7725 |
| Business FAX | Unknown |
| Employer's Email Address | laurelhillsp@pa.gov |
| Position | Life Guard at Laurel Hill State Park and Kooser State Park |

| | |
|--------------------------|---------------------------------------|
| Dates of Employment | 6/1992 to 9/1992 |
| Employer | Hidden Valley Resort |
| Mailing Address | PO Box 4420 Hidden Valley PA 15502 |
| Business Phone | 814.443.8000 |
| Business FAX | Unknown |
| Employer's Email Address | Unknown |
| Position | Life Guard |

| | |
|--------------------------|---|
| Dates of Employment | 5/1992 |
| Employer | Great Outdoor Clothing Outlet |
| Mailing Address | Horizon Mall Somerset PA 15501 NB: Both the mall and the store are no longer in business. |
| Business Phone | N/A |
| Business FAX | N/A |
| Employer's Email Address | N/A |
| Position | Sales Clerk |

PARTNERS AND ASSOCIATES

15. List all partners and associates, beginning with the current or most recent:

Answer 15: I have dedicated my career in New Mexico to public service. Consequently, I do not have any New Mexico partners or associates. Below, however, is a list of attorneys with whom I recall having worked in my various government jobs in New Mexico:

| <u>Santa Fe County</u> | <u>Department of Finance and Administration</u> | <u>Taxation and Revenue Department</u> |
|--|--|---|
| <i>Current Colleagues</i> Rachel A. Brown R. Bruce Frederick Roberta D. Joe Leslie Gayle Schaar Cristella E. Valdez | <i>Former Colleagues</i> Judith E. Amer Rebecca Barbara Jackson Paul M. Kippert Barbara Ann Michael Susanne Darling Roubidoux | <i>Former Colleagues</i> Julia A. Belles Peter Breen Tonya Noonan Herring Elizabeth K. Korsmo Jeffrey W. Loubet Susanne Darling Roubidoux Lewis J. Terr Carolyn A. Wolf |
| <i>Former Colleagues</i> Willie R. Brown Sophia S. Collaros Carolyn R. Glick Grace Philips Stephen C. Ross Andrea Salazar Elizabeth J. Travis | | |

EXPERIENCE

16. How extensive is your experience in Personal Injury Law?

Answer 16: As Santa Fe County Attorney, I regularly oversee and participate in the defense and resolution of personal injury claims and lawsuits against the County under the Tort Claims Act and 42 U.S.C. Section 1983. Examples include alleged medical malpractice, police brutality, prisoner assault, and inmate exposure to toxic substances.

17. How extensive is your experience in Commercial Law?

Answer 17: Extensive. I was a litigation associate at the New York, NY, office of the national law firm of Kirkpatrick & Lockhart LLP (now K&L Gates) from May to August 1996 (as a Summer Associate) and September 1997 to February 2003. There, I participated in virtually all aspects of complex commercial litigation, including pre-and post-discovery dispositive motions, propounding and responding to written discovery, taking and defending depositions, discovery motion practice, second chairing a multi-week trial before an administrative law judge in Austin, Texas, and representing clients in appeals to New York State and federal appellate courts. I also counseled clients with respect to contracts and compliance with State franchise laws.

After practicing at Kirkpatrick & Lockhart and taking a brief break from the practice of law to determine the next step in my career, I worked as a contract litigation attorney at a boutique, litigation firm in New York, NY, Hoguet Newman & Regal, LLP.

The diverse legal topics to which I was exposed during my career in New York include business torts, RICO, the Federal Arbitration Act, bankruptcy, wire and mail fraud, franchise law, forum non

conveniens, contract disputes in a range of industries (including the automobile, movie theatre, and on-line retailing industries), Delaware business organization law, fiduciary duties and indemnification of directors and officers, the Uniform Commercial Code, and the Robinson-Patman Act.

At Santa Fe County, I have represented, or overseen the representation of, the County in contract disputes with the City of Santa Fe, private partners in the Buckman Direct Diversion Project, developers with water service agreements with the County, and a large recipient of economic development assistance under the Local Economic Development Act.

18. How extensive is your experience in Domestic Relations Law?

Answer 18: I have no experience in Domestic Relations Law.

19. How extensive is your experience in Juvenile Law?

Answer 19: My limited experience in Juvenile Law relates to the operations of the Santa Fe County Youth Development Program, including confidentiality issues.

20. How extensive is your experience in Criminal Law?

Answer 20: My limited experience in Criminal Law relates to supervising attorneys in the prosecution of violations of Santa Fe County ordinances.

21. How extensive is your experience in Appellate Law?

Answer 21: I counsel Santa Fe County on the scope of appellate review of County decisions on quasi-judicial land use applications. This includes the drafting of written decisions for the Board of County Commissioners. I have also represented, and supervised attorneys representing, the County in appeals to the First Judicial District Court from land use decisions of the County and in two appeals to the Court of Appeals from orders of the First Judicial District Court.

In private practice in New York, I was a member of a team of lawyers who successfully represented a client in an appeal from an order granting summary judgment against it (state court) and another client in an appeal from an order granting summary judgment in favor of our client (federal court).

22. How many cases have you tried to a jury? Of those trials, how many occurred within the last two years? Please indicate whether these jury trials involved criminal or civil cases.

Answer 22: None.

23. How many cases have you tried without a jury? How many of these trials occurred within the last two years? Please indicate whether these non-jury trials involved criminal or civil cases.

Answer 23: One civil case tried to an administrative law judge in Austin, Texas. The case involved an existing automobile dealer's challenge under the Texas franchise laws to the appointment of a competing dealer in Houston, Texas.

24. How many appeals have you handled? Please indicate how many of these appeals occurred within the last two years.

Answer 24: Five. In New Mexico, I have been counsel of record in three appeals. One appeal was to the First Judicial District Court from a land use decision of the Board of County Commissioners; the other two were to the Court of Appeals from decisions of the First Judicial District Court. The two appeals to

the Court of Appeals were within the last two years. The first was dismissed by stipulation of the parties. The second is still pending. I have also supervised attorneys representing Santa Fe County in other appeals of County land use decisions to the First Judicial District Court.

In New York, I helped brief two appeals, the first one of which I also argued. The first appeal was in state court to the Supreme Court, Appellate Division, Second Department, from the grant of summary judgment against our client. The court reversed the grant of summary judgment. *Bonnie Briar Country Club, Inc. v. Bonnie Briar Syndicate, Inc., et al.*, 260 A.D.2d 336 (2d Dept 1999). The second was in federal court to the First Circuit Court of Appeals, from the grant of summary judgment in favor of our client. The court upheld the grant of summary judgment. *Motorsport Engineering, Inc. v. Maserati Spa, et al.*, 316 F.3d 26 (1st Cir. 2002).

PUBLIC OFFICES/PROFESSIONAL & CIVIC ORGANIZATIONS

25. Public Offices Held and Dates

| Public Office | Dates |
|---------------|-------|
| N/A | |

26. Activities in professional organizations, including offices, held, for last 10 years

| Professional Organization | Position Held | Dates |
|---------------------------|---------------|-------|
| N/A | | |

27. Activities in civic organizations, including offices, held, for last 10 years

| Civic Organization | Position Held | Dates |
|--------------------|---------------|-------|
| N/A | | |

28. Avocational interests and hobbies

Answer 28: Biking, hiking, running, and other exercise; listening to most types of music; reading; cooking; and spending time with my wife and two children.

29. Have you been addicted to the use of any substance that would affect your ability to perform the essential duties of a judge? If so, please state the substance and what treatment received, if any.

Answer 29: No.

30. Do you have any mental or physical impairment that would affect your ability to perform the essential duties of a judge? If so, please specify

Answer 30: No.

31. To your knowledge, have you ever been disciplined for violation of any rules of professional conduct in any jurisdiction? In particular, have you ever received any discipline, formal or informal, including an "Informal Admonition." If so, when, and please explain.

Answer 31: No.

32. Have you ever been convicted of any misdemeanor or felony other than a minor traffic offense?

Answer 32: No.

33. Have you ever had a DWI or any criminal charge, other than a minor traffic offense, filed

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| against you? If so, when? What was the outcome? |
| Answer 33: Yes. Prior to my 21 st birthday, I was cited with, and plead guilty to, four summary offenses in Pennsylvania stemming from the underage use of alcohol. Summary offenses in Pennsylvania are less severe than a misdemeanor. The offenses – none of which involved driving a vehicle – occurred in 1989, 1990, and 1993. They were disclosed and described on my applications for admission to the New York State Bar (Question No. 17) and New Mexico State Bar (Question No. 16). In my response to those bar application questions, I disclosed all the information and provided all the documentation that I have regarding those youthful mistakes. |
| 34. Have you ever been a named party in any lawsuit in either your personal or professional capacity? If so, please explain the nature of the lawsuit(s) and the result(s). |
| Answer 34: No. |
| 35. To your knowledge, is there any circumstance in your professional or personal life that creates a substantial question as to your qualifications to serve in the judicial position involved or which might interfere with your ability to so serve? |
| Answer 35: No. |
| 36. If you have served as a judge in New Mexico, have you ever been the subject of charges of a violation of the Code of Judicial Conduct for which a public filing has occurred in the New Mexico Supreme Court, and if so, how was it resolved? |
| Answer 36: N/A |
| 37. If you have served as a judge in New Mexico, have you ever participated in a Judicial Performance Evaluation, including interim, and if so, what were the results? |
| Answer 37: N/A |
| 38. Have you filed all federal, state and city tax returns that are now due or overdue, and are all tax payments up to date? If no, please explain. |
| Answer 38: Yes. |
| 39. Have you or any entity in which you have or had an interest ever filed a petition in bankruptcy, or has a petition in bankruptcy been filed against you? If so, please explain. |
| Answer 39: No. |
| 40. Are you presently an officer, director, partner, majority shareholder or holder of a substantial interest in any corporation, partnership or other business entity? If so, please list the entity and your relationship: |
| Answer 40: No. |
| 41. Do you foresee any conflicts under the NM Code of Judicial Conduct that might arise regularly? If so, please explain how you would address these conflicts. |
| Answer 41: Yes. My wife is the supervising Administrative Law Judge for the New Mexico State Personnel Board. Consequently, I would seemingly have to recuse myself from appeals from that board. |
| 42. Do you meet the constitutional qualifications for age, residency, and years of practice for the |

judicial office for which you are applying? Please explain.

Answer 42: Yes. I am 45 years old. I have lived in the First Judicial District continuously since May 2004. Except for approximately nine months between February 2003 and May 2004, I have continuously been engaged in the full-time practice of law since September 1997, including the last 13 plus years as a public servant in New Mexico.

43. Please explain your reasons for applying for a judicial position and what factors you believe indicate that you are well suited for it.

Answer 43: I am applying for the upcoming vacancy on the First Judicial District Court for two reasons. First, the job is of utmost importance to our community and the State. Judges (and juries) are entrusted to timely and impartially resolve disputes. Ultimate acceptance of the rule of law and judicial decisions depends upon having industrious, decisive, and skilled judges who have (i) the professional skills to understand the law, apply it impartially, and clearly communicate the basis for their decisions and (ii) the temperament to patiently listen to litigants and treat them with respect. Second, I am confident that I possess the attributes necessary to be such a judge, as I explain in greater detail below using the Judicial Nominating Commission's evaluation criteria.

Industry. Industry has been a hallmark of my legal career, and I would bring the same work ethic to the bench. The ultimate source of this industry is my mother. She cleaned other people's homes and businesses to provide for me and my four older siblings after my father died in 1973, teaching me and my siblings the value of hard work (among many other things) in the process.

Decisiveness. I am adept at quickly mastering the facts and law to timely provide cogent analysis on a wide range of subject matters. As Santa Fe County Attorney, the pace and breadth of County business requires me to make frequent decisions on many different subjects at a rapid pace. The Board of County Commissioners meets twice monthly, at which meetings it considers a variety of administrative, legislative, and administrative adjudicatory matters with legal or political deadlines. My team and I must meet the call for comprehensive advice on all matters considered by the Board. At the Department of Finance and Administration, I was asked during and after each legislative session to make recommendations to the Governor's Office concerning a wide range of bills passed by the Legislature. The deadlines for such analysis were exceedingly short.

Professional skills. My litigation experience and breadth of practice make me particularly well-suited for this position. In private practice in New York, New York, I participated in virtually all phases of complex commercial litigation and was taught litigation skills by national class lawyers with decades of experience.

As a public servant in New Mexico, litigation has been a regular feature of my practice. At Santa Fe County, I have personally represented the County as well as its elected officials and employees in a variety of litigation and adversarial proceedings, including habeas corpus proceedings, a declaratory judgment action challenging the countywide application and constitutionality of the county hold harmless gross receipts tax, and mandamus proceedings brought to challenge the Board of County Commissioners' denial of an annexation petition. In addition, I oversee outside counsel hired by the County or its insurance carriers to represent the County in litigation. My oversight is active and includes the development of strategy and legal positions, reviewing and revising significant pleadings, and participating in mediations. At the New Mexico Taxation and Revenue Department, I represented the

Department in tax litigation in State courts and supervised attorneys representing the Department in Court and before administrative hearing officers. At the New Mexico Department of Finance and Administration, I was among the group of attorneys who represented the Governor in two original proceedings brought in the New Mexico Supreme Court to challenge her partial vetoes. *State ex rel. Smith v. Martinez*, 2011-NMSC- 043, 150 N.M. 703, and *State ex rel. Stewart v. Martinez*, 2011-NMSC-045.

Judicial temperament. My children and varied legal experiences have taught me to be patient. As Santa Fe County Attorney, I must regularly maintain a calm demeanor when advising the Board of County Commissioners at public meetings, negotiating with other governmental entities or plaintiffs, meeting with the public, and interacting with elected officials, County management, and staff.

I appreciate that each case is important to the participants. I have witnessed this firsthand while attending public hearings and advising the Board of County Commissioners on land use cases. I have also come to empathize with plaintiffs suing the County and appreciate the significance of their cases and the underlying events to them. I treat the plaintiffs with whom I interact, at depositions, in court, or mediations, with respect and courtesy, recognizing that, even if the County did nothing wrong legally, those plaintiffs have often experienced hardship.

Social awareness. Through my public service in New Mexico, I have developed a deep understanding of the social and public policy issues confronting the community and State. Local government is involved in virtually all areas of public policy, including utilities; land use regulation; public safety; community services for the elderly, sick, and indigent; behavioral health; public work projects; and the incarceration of youth and adults. As Santa Fe County attorney, I understand those public policy issues as well as the interplay between them. For example, we obtained an inspection order from the District Court to inspect the house of an older woman who lived alone for compliance with County ordinances concerning solid waste and nuisances. The inspection revealed that she was a hoarder who lived in nauseating stench among rotting food, accumulated trash, and vermin, without a working refrigerator or toilet. This presented an immediate danger to herself and her neighborhood, due to the health and fire hazard her living situation created. The Court-authorized inspection allowed County staff to put the woman in contact with the County's mobile crisis team, the State's Adult Protective Services, and professionals who could clean and rehabilitate her house. The point is that elder care, behavioral health, solid waste regulation, and fire hazard regulation intersected at this one woman's life and home. Experience with such multi-faceted situations will enable me to be an effective District Court Judge. I understand that the relief being sought will often have larger implications. To continue with this example, beyond remedying the public health and safety issues at the person's home, the Court's inspection order proved to be the gateway to having a person's underlying behavioral health and other needs addressed.

At the State, the Department of Finance and Administration (DFA) was at the center of State government, which afforded me the opportunity to learn about many of the social and public policy issues confronting New Mexico. DFA develops the Governor's executive budget recommendation and oversees the implementation of the State's budget, among other tasks. The budget document itself is the State's single most important policy statement, since it establishes where the State will spend its limited resources. In addition, to oversee State agencies' budgets, we often had to learn the laws and missions of those agencies.

Community contacts. As Santa Fe County Attorney, I have tried to educate the public about quasi-judicial proceedings before the Board of County Commissioners (Board). The public often misunderstands quasi-judicial proceedings. They think that the will of the people, as established through public turnout at public hearings, ought to decide the fate of land use applications, regardless of the facts or law; that they should be able to meet with Commissioners outside of public hearings to lobby for a Commissioner's vote; and that closed deliberations on the case means the process is corrupt.

My non-legal writing sample is an opinion piece I wrote for the Santa Fe New Mexican in September 2014. At the time, an application was pending before the Board concerning a proposed basalt mine on La Bajada Mesa. The goal of the piece was to correct the misunderstandings noted above. I have also discussed some of those same themes at the Neighborhood Law Center's annual Law and Policy for Neighborhoods Conference.

These (and other) efforts have yielded fruit. The public seemingly has a greater understanding and respect for the role of Commissioners as quasi-judges. The press too seems more understanding, recently opining that judgment must be reserved on a contentious land use application until the application is evaluated on the law and facts.

I would be willing to make similar efforts at community contact as a judge, consistent with the Code of Judicial Conduct.

Collegiality. Throughout my public service career in New Mexico, I have worked professionally and effectively with people of varied professional, educational, socio-economic, and ethnic backgrounds. My ability to do so is built upon respect for varying viewpoints and individual people, the ability to state my or my client's views firmly but respectfully, the ability to listen to other points of view patiently and with the goal of understanding, and the ability to politely give and respectfully receive constructive feedback. These skills allowed me to maintain positive working relationships with other State agencies regulated by the New Mexico Department of Finance and Administration.

At Santa Fe County, they have also allowed me to maintain positive and professional working relationships with elected officials and department/division heads, the public, and other governmental entities, including those with which the County has sometimes been adverse.

Impartiality. To effectively represent a client, you must be able to impartially evaluate the law and the facts. This allows you to give your client objective advice and allows the client to make an informed decision. In other words, while you must ultimately be a zealous advocate for whatever position your client takes, the best lawyers are dispassionate and intellectually honest in assessing their client's case or options. That impartiality defines my career as a public servant. I have always provided my clients with objective advice, striving to find legal options to meet their policy objectives, but not being afraid to say no when we could not find a legal way to do so.

Writing ability. I am an efficient and effective writer, able to cogently analyze and present complex ideas, distill arguments to their essence, dispense with unnecessary detail, and tailor my writing for its intended audience and purpose. In addition to legal briefs and memoranda, I regularly draft legal advice for busy policymakers who prize brevity and plain English.

Speaking ability. My current job requires effective oral communication skills. For example, at the twice monthly meetings of the Board of County Commissioners (Board), I am regularly asked to respond to questions – many of them unexpected – from the public or commissioners. I must give clear, concise answers that are understandable to commissioners, attorneys and parties appearing before the Board, as well as the public.

In sum, I am applying for this vacancy because I am confident that I will be able to effectively serve the community in this critically important position and am prepared to work hard to do so.

44. Does submission of this application express your willingness to accept judicial appointment to the First Judicial District Court if your name is chosen by the Governor?

Answer 44: Yes.

Items to be Submitted in Separate Document(s)

1. Please have **at least two, but not more than five**, letters of recommendation submitted directly to The Chair of the Judicial Selection Commission. Include letters from one or more professional adversaries. **If more than five letters are submitted, only the first five received will be submitted to the Commission.** Letters of recommendation may be scanned to be part of the application; however, **the original letters must be mailed directly from the source to the Judicial Selection Office.**
2. Please attach a list of no more than eight (8) references.
3. Please enclose **one** legal writing sample, such as a legal memorandum, opinion, or brief. If you had assistance from an associate, clerk or partner, indicate the extent of such assistance. Please submit no more than 20 pages.
4. You may also attach a copy of **one** other publication you have written which you feel would be relevant to the Commission's consideration of your qualifications. For this too, please submit no more than 20 pages. If you include more than one additional publication, only one will be presented for the Commission's review. The others will be retained on file with the rest of your application materials.
5. If you have, currently or in the past, suffered from any mental, physical or other condition that would affect your ability to perform the essential duties of a judge, and which has not been disclosed above, please describe the nature of such condition and your treatment and explain how it would affect your service. You may answer this request, as well as Questions 29 and 30, by submission of a separate confidential letter. If you wish the letter to remain confidential, please mark "CONFIDENTIAL" at the top of the first page of the letter. The information will be made available to each commissioner and otherwise hold the information confidential to the extent allowed by law.

[Instructions: All of the answers stated in this application must be affirmed as true under penalty of perjury, by self-affirmation.]

AFFIRMATION

The undersigned hereby affirms that he/she is the person whose signature appears herein on this application for judicial appointment; that he/she has read the same and is aware of the content thereof; that the information that the undersigned has provided herein is full and correct according to the best knowledge and belief of the undersigned; that he/she has conducted due diligence to investigate fully each fact stated above; that he/she executed the same freely and voluntarily; that he/she affirms the truth of all statements contained in this application under penalty of perjury; and that he/she understands that a false answer may warrant a referral to the Disciplinary Board or other appropriate authorities.

/s/  Date: 8/29/2017
Gregory S. Shaffer

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

**The CITY OF ESPAÑOLA, a New Mexico
Municipal Corporation,**

NO. D-101-CV-2015-01396

and

**RICHARD L. LUCERO d/b/a COUNTRY FARM SUPPLY,
MARLO R. MARTINEZ d/b/a NEW MEXICO OFFICE PRODUCTS,
JOHNNY'S STANDARD MOTOR PARTS, Inc.,
and ACCU BLUEPRINT AND COPY, INC.,**

Plaintiffs,

and

**The CITY OF LAS CRUCES, New Mexico, a
Municipal Corporation,**

Plaintiff-in-Intervention

v.

**COUNTY COMMISSION OF SANTA FE
COUNTY, New Mexico,**

and

**DEMESIA PADILLA, SECRETARY, NEW MEXICO DEPARTMENT
OF TAXATION AND REVENUE and THE NEW MEXICO DEPARTMENT
OF TAXATION AND REVENUE,**

Defendants,

and

DOÑA ANA COUNTY, New Mexico,

Defendant-in-Intervention.

**BRIEF IN SUPPORT OF JOINT MOTION TO DISMISS PURSUANT TO RULE 1-
012(B)(1) AND (6) NMRA FOR LACK OF SUBJECT MATTER JURISDICTION AND
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Pursuant to Rule 1-012(B)(1) and (6) NMRA, the Board of County Commissioners of the County of the Santa Fe (“Santa Fe County”), Demesia Padilla, Secretary of Taxation and Revenue (“Secretary”), the New Mexico Department of Taxation and Revenue Department (“TRD”), and the Board of County Commissioners of the County of Doña Ana (“Doña Ana County”)¹ (collectively, “Defendants”), by and through their undersigned counsel, submit this brief in support of their joint motion to dismiss the claims of business plaintiffs for lack of subject matter jurisdiction and to dismiss entirely the Third Amended Complaint for Declaratory Judgment (“Third Amended Complaint”) and Complaint in Intervention and for Declaratory Judgment (“Complaint in Intervention”) for failure to state a claim upon which relief can be granted.

I. PRELIMINARY STATEMENT.

Laws 2013, Chapter 160 authorized counties and municipalities to impose the gross receipts taxes at issue. The county gross receipts tax is known as the county hold harmless gross receipts tax (“CHH GRT”) and applies to all persons engaging in business “in the county”; the municipal gross receipts tax is known as the municipal hold harmless gross receipts tax (“MHH GRT”) and applies to all persons engaging in business “in the municipality”. Santa Fe County and Doña Ana County (collectively, “Counties”) have each imposed one or more increments of the CHH GRT. The City of Las Cruces (“Las Cruces”) and City of Española (“Española”)

¹ The Third Amended Complaint for Declaratory Judgment names the “County Commission of Santa Fe County” as a defendant and the Complaint in Intervention and for Declaratory Judgment names Doña Ana County as the defendant-in-intervention. NMSA 1978, § 4-46-1, however, provides that, “[i]n all suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be the board of county commissioners of the county of” Accordingly, Santa Fe County and Doña Ana County respond under those names.

(collectively, "Cities"), cities wholly or partially within Doña Ana County and Santa Fe County, respectively, have each imposed one or more increments of the MHH GRT.

Plaintiffs and Plaintiff-in-Intervention challenge imposition of the CHH GRT imposed by Santa Fe County and Doña Ana County on persons engaging in business within their municipal boundaries. Accepting all well-pleaded facts as true, Plaintiffs and Plaintiff-in-Intervention have failed to state a claim upon which relief can be granted. Succinctly stated:

- The court lacks subject matter jurisdiction over the claims of business plaintiffs, which is an impermissible attempt to end-run the exclusive statutory remedies provided to taxpayers in the Tax Administration Act.
- All applicable rules of statutory construction lead to the same conclusion: The CHH GRT applies to all persons engaging in business in a county that has imposed the CHH GRT, including those located within a municipality.
- Laws 2013, Chapter 160 does not violate N.M. Const., art. IV, § 16, since it concerns but one subject –taxation – and the law's title expressly states that it allows municipalities and counties to impose a gross receipts tax.
- The CHH GRT and MHH GRT do not constitute impermissible double taxation, since they are separate taxes imposed by separate taxing authorities.
- The CHH GRT does not violate N.M. Const., art. VIII, § 1, since it is an excise tax and that constitutional provision does not apply to excise taxes and the CHH GRT applies equally and uniformly to all persons engaging in business in the county, which is all that provision requires.

Accordingly, the Third Amended Complaint and Complaint in Intervention should be dismissed and judgment entered for Defendants.

II. MATERIAL FACTS.

1. On October 9, 2013, the governing body of Las Cruces enacted Ordinance No. 2698, which imposed “on any person engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax equal to three-eighths of one percent (.375%) of the gross receipts reported or to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Act as it now exists or as it may be amended.” [Complaint in Intervention, ¶ 10 and Ex. A, Section 1.] This excise tax is known as the MHH GRT. [Id. Ex. A, Section 1.]

2. The Las Cruces MHH GRT was implemented on July 1, 2014. [Id., ¶ 10 and Ex. B.]

3. Las Cruces is located within Doña Ana County. [Id., ¶ 1.]

4. On March 24, 2015, Doña Ana County enacted Ordinance Number #277-2015, which “imposed on any person engaging in business in the county, for the privilege of engaging in business in this county an excise tax equal to three-eighths of one percent (.375%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.” [Id., ¶ 11 and Ex. C, Section 1.] This excise tax is known as the CHH GRT. [Id., Ex. C., Section 1.]

5. The Doña Ana County CHH GRT was implemented on July 1, 2015. [Id., ¶ 11.]

6. On March 20, 2014, the governing body of Española enacted Ordinance Number 2014-03, which “imposed on any person engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax equal to three-eighths [sic] of one percent (.375%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it

may be amended.” [Third Amended Complaint, ¶ 23 and Ex. B.] This excise tax is known as the MHH GRT. [Id., Ex. B., Section 1.]

7. The Española MHH GRT was effective on July 1, 2014. [Id., Ex. B, Section 5.]

8. Española is located partially within Santa Fe County. [Id., ¶ 5.]

9. On March 24, 2015, Santa Fe County adopted Ordinance No. 2015-3, which “imposed on any person engaging in business in Santa Fe County, for the privilege of engaging in business in Santa Fe County, an excise tax equal to one-eighth of one percent (.125%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.” [Third Amended Complaint, ¶ 38 and Ex. A., Section 1.] This excise tax is known as the CHH GRT. [Third Amended Complaint, Ex. A., Section 1.]

10. The Santa Fe County CHH GRT was effective on July 1, 2015. [Third Amended Complaint, Ex. A., Section 5.]

11. Plaintiffs Richard L. Lucero, Marlo R. Martinez, Johnny’s Standard Motor Parts, Inc., and Accu Blueprint and Copy, Inc. (“Business Plaintiffs”) “are all individual owners of businesses or incorporated businesses engaging in business in the Santa Fe County portion of the City of Española” and are subject to the Santa Fe County CHH GRT. [Third Amended Complaint, ¶¶ 15, 19.]

III. ARGUMENT.

“A motion to dismiss for failure to state a claim upon which relief can be granted tests the legal sufficiency of the complaint. For purposes of the motion, the well-pleaded material allegations of the complaint are taken as admitted, but conclusions of law or unwarranted deductions of fact are not admitted. A complaint may be dismissed on motion if it is clearly without any merit, and the want of merit may consist of an absence of law to support a claim of

the sort made, or of facts sufficient to make a good claim.” *Saenz v. Morris*, 1987-NMCA-134, ¶ 6, 106 N.M. 530 (internal quotation marks and citations omitted). Statutory construction is a “question of law appropriate for disposition on a motion to dismiss.” *State v. Johnson*, 2009-NMSC-049, ¶ 4, 147 N.M. 177.

A. Court Lacks Subject Matter Jurisdiction over Business Plaintiffs’ Claims.

Pursuant to Rule 1-010(C) NMRA, Defendants adopt by this reference the following section of TRD’s Response and Memorandum in Opposition to Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction: Argument, Section I(A), “Business Plaintiffs Failure to Exhaust their Administrative Remedies Prior to Initiating this Lawsuit.”²

B. The CHH GRT Applies Countywide.

1. The plain meaning of NMSA 1978, § 7-20E-28 (2013).

Section 7-20E-28(A), part of the County Local Option Gross Receipts Taxes Act (Act), NMSA 1978, Chapter 7, Article 20E, provides, in pertinent part, as follows:

The majority of the members of the governing body of any county may impose by ordinance an excise tax not to exceed a rate of three-eighths percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. (Emphasis added.)

“[U]nless specifically defined otherwise in the [Act],” the Act defines “county” without geographic limitation as “a county, including an H class county[.]” NMSA 1978, § 7-20E-2(A) (1994). Section 7-20E-28(A) does not otherwise specifically define the term “county”.

Applying Section 7-20E-2(A)’s general definition in Section 7-20E-28(A), thus, means that the CHH GRT applies to any person engaging in business anywhere in the county imposing the tax.

Under the plain meaning rule, “[i]f the language of a statute is not ambiguous, the literal meaning of the words must be applied[.]” *Cummings v. X-Ray Associates of N.M., P.C.*, 1996 -

² Defendants’ decision not to challenge the standing of Las Cruces and Española in this motion does not constitute a waiver of that defense. Rule 1-012(H)(1).

NMSC- 035, ¶ 45, 121 N.M. 821 (internal quotation marks and citations omitted); *see also U.S. Xpress, Inc. v. State of New Mexico*, 2006-NMSC-017, ¶ 11, 139 N.M. 589. Under the plain meaning of “county,” persons doing business within the Cities are also doing business within the Counties and are thus subject to both the MHH GRT and the CHH GRT.

The plain meaning interpretation is confirmed by the fact that the Act also defines “county area”, which is “that portion of a county located outside the boundaries of any municipality” “County area” is not used in Section 7-20E-28. Had the Legislature intended to limit the applicability of the CHH GRT to the county area, it would have used that term in Section 7-20E-28, as it did in other sections of the Act.

2. Read in its entirety, the Act supports the plain meaning interpretation of Section 7-20E-28.

When analyzing a section of a statutory act, courts “read the act in its entirety and construe all the provisions together and attempt to view them as a harmonious whole.”

Cummings, 1996 -NMSC- 035, ¶ 45.

Except in those sections with specific definitions of “county”, “county area”, or other operative terms or geographical restrictions not of general applicability, the structure of the Act is clear and consistent and presents a harmonious whole. Where the Legislature intended to allow a countywide local option GRT, it consistently allowed the tax on all “person[s] engaging in business in the county.” NMSA 1978, § 7-20E-9(A) (2014) (authorizing imposition of the “county gross receipts tax” on “any person engaging in business **in the county**”); § 7-20E-18(A) (2009) (authorizing imposition of the “county health care gross receipts tax” on “any person engaging in business in the county for the privilege of engaging in business **in the county**”); § 7-20E-21(A) (2010) (authorizing imposition of the “county capital outlay gross receipts tax” on “any person engaging in business **in the county**”). (Emphasis added in all sections).

In contrast, when the Legislature intended to restrict a county local option GRT to unincorporated areas outside of municipalities, it expressly limited counties to imposing the tax on “person[s] engaging in business in the county area.” NMSA 1978, § 7-20E-15(A)(2004) (authorizing imposition of the “county fire protection excise tax” on “any person engaging in business **in the county area**”); § 7-20E-17(A) (1993) (authorizing imposition of the “county environmental services gross receipts tax” on “any person engaging in business **in the county area**”); and § 7-20E-19(A) (2003) (authorizing imposition of the “county infrastructure gross receipts tax” on “any person engaging in business **in the county area**”). (Emphasis added in all sections.)

NMSA 1978, § 7-20E-22 (2007) clearly demonstrates the Legislature’s intent to use these defined terms and standard phrases to establish the geographic scope of a county local option GRT. Section 7-20E-22(A) authorizes a governing body of an eligible county to enact an ordinance imposing an excise tax on “a person engaging in business in the county for the privilege of engaging in business.” (Emphasis added.) Recognizing the clear import of the phrase “in the county” in that subparagraph, the Legislature named this tax the “countywide emergency communications and emergency medical and behavioral health services tax”. *Id.* (emphasis added).

In contrast, Section 7-20E-22(B) authorizes an eligible county to enact an ordinance imposing an excise tax on “a person engaging in business in the county area for the privilege of engaging in business.” (Emphasis added.) Recognizing the clear import of the phrase “county area” in that subparagraph, the Legislature named this tax the “county area emergency communications and emergency medical and behavioral health services tax”. *Id.* (emphasis added.)

3. TRD's interpretation is entitled to deference.

TRD is charged with “interpret[ing] the provisions of the [Act]” and with “administer[ing] and enforce[ing] the collection of each tax authorized under the provisions of the [Act].” NMSA 1978, § 7-20E-8 (1993). Accordingly, TRD’s interpretation that Section 7-20E-28 makes the CHH GRT applicable countywide is entitled to deference. *Starko, Inc. v. New Mexico Human Services Dept.*, 2014-NMSC-033, ¶ 32, 333 P.3d 947.

4. NMSA 1978, § 4-37-2 (1975) does not apply to the CHH GRT.

Plaintiffs rely upon NMSA 1978, § 4-37-2 (1975), a general statute that provides that county ordinances are generally “not effective within the limits of any incorporated municipality.” [Third Amended Complaint, ¶¶ 46-48.] Section 7-20E-28 is a specific statute establishing the geographic area in which a specific county tax is effective. Consequently, Section 7-20E-28 prevails over and is an exception to Section 4-37-2 under the general/specific rule of statutory construction, which applies to both civil and criminal statutes. *State v. Santillanes*, 2001-NMSC-018, ¶¶ 7, 11, 130 N.M. 464.

5. Plaintiffs’ reliance on NMSA 1978, Section 7-20E-24 (2005) is misplaced.

Plaintiffs seek to rely upon the definition of “county area” in Section 7-20E-24 to argue that the Legislature knows how to enlarge the definition of “county area” to include businesses located within municipalities when that is its intent and that, when the Legislature has done so, it has made concessions to municipalities, such as by giving them a portion of the revenue or a voice in how the revenue is spent. [Third Amended Complaint, ¶¶ 51-53.] Section 7-20E-24 is irrelevant to the proper interpretation of Section 7-20E-28 for the following reasons.

First, Section 7-20E-28 does not use the term “county area”. Second, Section 7-20E-24 has a specific definition of “county area” that is different than the general definition in Section 7-

20E-2(B). Consequently, even if Section 7-20E-28 used the term “county area”, which it does not, Section 7-20E-24 would shed no light on the Legislature’s intent with respect to Section 7-20E-28. Third, while the Legislature did give certain municipalities some concessions in Section 7-20E-24, the only example cited by Plaintiffs, it has not done so in many other statutes authorizing a countywide local option GRT. *E.g.*, NMSA 1978, § 7-20E-9; § 7-20E-18; § 7-20E-21; and § 7-20E-28. Consequently, the absence of such concessions to municipalities in Section 7-20E-28 does not negate the Legislature’s clear intent to allow counties to impose the CHH GRT countywide.

6. Plaintiffs’ and Plaintiff-in-Intervention’s last ditch efforts to establish that the Legislature did not mean what it said are unavailing.

Seeking to overcome the plain meaning of Section 7-20E-28, the overall structure of the Act, and the deference due TRD’s interpretation, Plaintiffs and Plaintiff-in-Intervention offer a grab bag of meritless arguments to establish that the Legislature did not mean what it said.

First, Plaintiffs argue that the Legislature could not have intended the CHH GRT to apply countywide, since “the language of §7-20E-28 specifically authorizes the County Ordinance to only apply to businesses “in the County” and § 7-19D-18, NMSA 1978 specifically authorizes a municipality to enact a Hold Harmless GRT within municipal boundaries”. [Third Amended Complaint, ¶ 57.] The Legislature, however, has on several occasions authorized counties and municipalities to impose a gross receipts tax with the same name on businesses located within municipal boundaries. *Compare* NMSA 1978, § 7-19D-9(A) (authorizing imposition of the “municipal gross receipts tax” on “any person engaging in business in the municipality”) *with* § 7-20E-9(A) (authorizing imposition of the “county gross receipts tax” on “any person engaging in business in the county”) and NMSA 1978, § 7-19D-12(A) (authorizing imposition of the “municipal capital outlay gross receipts tax” on “any person engaging in business in the

municipality”) *with* § 7-20E-21(A) (authorizing imposition of the “county capital outlay gross receipts tax” on “any person engaging in business in the county”).

Second, Plaintiffs-in-Intervention argue that the Legislature could not have intended the CHH GRT to apply countywide because the CHH GRT was not subject to referendum and because municipal businesses do not “have any way to object or appeal the decision of [TRD] and Doña Ana County in the expenditures of municipal monies on County public projects[.]” [Complaint In Intervention, ¶¶ 21-22.] The fact that the CHH GRT was not subject to referendum establishes nothing about legislative intent, since other countywide gross receipts taxes are also not subject to referendum. *E.g.*, NMSA 1978, § 7-20E-10(B) and § 7-20E-18(A). Moreover, municipal business owners residing in a county, like all other county residents, are represented by a county commissioner. N.M. Const., art. X, § 7. Accordingly, they have the same right as all other county residents to object to the imposition of the CHH GRT and to participate in the county democratic process.

Third, Plaintiffs attempt to argue that the Legislature could not have intended the CHH GRT to apply countywide because it would provide counties with a windfall, meaning that counties could obtain more in CHH GRT revenue than they lost due to the phase out of so-called hold harmless distributions from the State. [Third Amended Complaint, ¶ 44.] The premise of this argument is that the CHH GRT and the MHH GRT were meant to provide a local option gross receipts tax whereby a county or municipality could elect to replace hold harmless distributions from the State on a dollar for dollar basis. Laws 2013, Chapter 160, however,

clearly did not intend to replace revenue on a dollar for dollar basis. [Laws 2013, Chapter 160 is attached hereto as Exhibit A.³]

Pursuant to Laws 2013, Chapter 160, the so-called hold harmless gross receipts tax distributions from the State to counties and municipalities are phased out over a period of 14 years, beginning with Fiscal Year 2016, at the rate of six to seven percent per year. Laws 2013, Chapter 160, Section 1 (amending NMSA 1978, § 7-1-6.46 to phase out distributions to municipalities “in lieu of revenue that would have been received by the municipality but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978”) and Section 2 (amending NMSA 1978, § 7-1-6.47 to phase out distributions to counties “in lieu of revenue that would have been received by the county but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978”). All three increments of the MHH GRT and CHH GRT, however, could be implemented immediately beginning on July 1, 2013. Laws 2013, Chapter 160, Section 11 (enacting what was codified as NMSA 1978, § 7-19D-18; Section 12 (enacting what was codified as Section 7-20E-28); and Section 15(A) (“The effective date of the provisions of Sections 1 . . . 11 and 12 of this act is July 1, 2013.”).

In short, the possibility of a “windfall”, as defined by Plaintiffs, was a basic structure of Laws 2013, Chapter 160, which allowed municipalities and counties to net more revenue after enactment of that law than they did before. Plaintiffs offer no arguments based on the

³ The Court may take judicial notice of a law. *City of Aztec v. Gurule*, 2010-NMSC-006, ¶ 12, 147 N.M. 693. Defendants are attaching Laws 2013, Chapter 160 as a convenience to the Court. *Id.*, 2010-NMSC-006, ¶ 19. This does not convert their motion into a motion for summary judgment, since courts may, when ruling on a Rule 1-012(b)(6) motion, examine “matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 323, 127 S.Ct. 2499, 2509 (2007); *see also* 5B Wright & Miller § 1357 (3d ed.) (“Numerous cases . . . have allowed consideration of . . . items subject to judicial notice [and] matters of public record; these items may be considered by the district judge without converting the motion into one for summary judgment.”)

Legislative text to demonstrate that the Legislature intended one “windfall” – the one that Española and Las Cruces are enjoying⁴ – but not the other alleged “windfall” – imposition of the CHH GRT countywide.

Third, the Plaintiffs argue that imposition of the CHH GRT within municipal boundaries is “unfair, unjust and contrary to the public interest.” [Third Amended Complaint, ¶ 61.] To the extent this is a legal argument, Plaintiffs have offered no argument as to why the Legislature may not properly classify all businesses within a county as a fitting subject of county taxes. “In the field of taxation, more than in other fields, the legislature possesses the greatest freedom in classification[.]” *Pinghua Zhao v. Montoya*, 2014-NMSC-025, ¶ 19, 329 P. 3d 676 (internal quotation marks and citations omitted). Moreover, as previously demonstrated, this classification is a common one in the Act. *E.g.*, NMSA 1978, § 7-20E-9; § 7-20E-18; § 7-20E-21; and § 7-20E-28. The Legislature also authorized imposition of county property taxes on property within municipalities for general purposes. *E.g.*, NMSA 1978, § 7-37-7(B)(1) (2004).

C. Laws 2013, Chapter 160 Does Not Violate N.M. Const., art. IV, § 16.

Plaintiffs are seemingly making two separate arguments based upon Article IV, Section 16: *viz.*, (1) that the title of Laws 2013, Chapter 160 is constitutionally defective because it did not give notice that the CHH GRT or MHH GRT was included and (2) that Laws 2013, Chapter 160 is constitutionally defective because it contains more than one subject. [Third Amended Complaint, ¶ 29(B) (describing issue as whether law violated prohibition on “hodge-podge or log rolling legislation”) and ¶¶ 30-33 (describing issue as a title defect). Neither argument has merit.

N.M. Const., art. IV, § 16 provides in pertinent part as follows:

⁴ The Española and Las Cruces MHH GRT are the maximum rate of .375% and were effective on July 1, 2014, over a year before their distributions under NMSA 1978, 7-1-6.46 were reduced at all and 15 years before those distributions are to be eliminated.

The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws

Two things about the title Laws 2013, Chapter 160 of are note. First, Plaintiffs did not quote the title of the bill as it passed the Legislature. *Compare* Third Amended Complaint, ¶ 30 with Exhibit A. Second, the title of Laws 2013, Chapter 160 includes the following phrase: “ALLOWING MUNICIPALITIES AND COUNTIES TO IMPOSE A GROSS RECEIPTS TAX.”

Before addressing Plaintiffs’ two arguments specifically, it bears emphasizing that “every presumption is to be indulged in favor of the validity and regularity of legislative enactments” and that “[a] statute will not be declared unconstitutional unless the court is satisfied beyond all reasonable doubt that the legislature went outside the constitution in enacting the challenged legislation.” *City of Raton v. Sproule*, 1967-NM-141, ¶ 9, 78 N.M. 138 (citations omitted).

With respect to the prohibition on a bill embracing more than one subject, the New Mexico Supreme Court has explained that “the term ‘subject,’ as used in the Constitution, is to be given a broad and extended meaning so as to authorize the legislature to include in one act all matters having a logical or natural connection.” *Silver City Consol. School Dist. No. 1 v. Board of Regents of New Mexico Western College*, 1965-NMSC-035, ¶ 8, 75 N.M. 106. The one subject restriction is, therefore, violated only if “the provisions of the act are so disconnected or repugnant to th[e] subject or to each other that it can be said that by no fair intendment can they be considered as germane to this general subject.” *State v. Mirabal*, 1928-NMSC-056, ¶ 10, 33 N.M. 553. Accordingly, in rejecting claims that a duly enacted law contained more than one subject, the Supreme Court has consistently defined the subject of a bill broadly. *E.g.*, *State v. Roybal*, 1960-NMSC-012, ¶ 9, 66 N.M. 416 (“Obviously [the challenged law’s] subject is motor vehicles.”); *Mirabal*, 1928-NMSC-056, ¶ 10 (“[T]he subject of the act in question is ‘Motor

Vehicles and Trailers,’ or it might be stated that the subject is ‘Motor Vehicles and Trailers Operated on the Highways of This State.’”).

Here, the obvious subject of Laws 2013, Chapter 160 is taxation. Each of the provisions of the law – including Sections 11 and 12 concerning the MHH GRT and CHH GRT – relate to that same general subject. Accordingly, the law does not violate the one subject restriction.

With respect to the alleged title defect, the title expressly includes the following language: “ALLOWING MUNICIPALITIES AND COUNTIES TO IMPOSE A GROSS RECEIPTS TAX.” This clearly gave reasonable notice to legislators and the public that it contained provisions allowing counties and municipalities to impose a gross receipts tax, which is all that Article IV, Section 16 requires. *State v. Ingalls*, 1913-NMSC-068, ¶ 14, 18 N.M. 211; *State v. Aragon*, 1951-NMSC-052, ¶ 6, 55 N.M. 423. This is especially so given the New Mexico Supreme Court’s policy of “applying a liberal construction to a specific title as well as to one containing broad and comprehensive language.” *Silver City*, 1965-NMSC-035, ¶ 8.

D. The CHH GRT Does Not Violate N.M. Const., art. VIII, § 1.

Plaintiff-in Intervention argues that the CHH GRT violates N.M. Const., art. VIII, § 1. [Complaint In Intervention, ¶¶ 17, 23.] CHH GRT is an excise tax. Section 7-20E-28(A) (authorizing imposition of “an excise tax”). N.M. Const., art. VIII, § 1 does not apply to excise taxes. *Flynn, Welch & Yates v. State Tax Commission*, 1934-NMSC-001, ¶¶ 15-16, 41, 38 N.M. 131; *Bowman v. Continental Oil Co.*, 256 U.S. 642, 649, 41 S.Ct. 606, 608 (1921).

Moreover, the CHH GRT applies equally and uniformly to all persons subject to it – i.e., all persons engaged in business in the county enacting it – which is all the clause requires in any event. *Bowman*, 256 U.S. at 649.

E. The CHH GRT Does Not Constitute Double Taxation.

Plaintiffs and Plaintiff-in-Intervention both argue that allowing the CHH GRT to be imposed countywide amounts to impermissible double taxation. [Third Amended Complaint, ¶¶ 23-24; Complaint in Intervention, ¶ 18.] The New Mexico Supreme Court, however, has long defined impermissible double taxation as “imposition of the same tax, by the same taxing power, upon the same subject matter.” *Aragon v. Empire Gold Mining & Milling Co.*, 1943-NMSC-041, ¶ 20, 47 N.M. 299; *see also State v. Ingalls*, 1913-NMSC-068, ¶ 29, 18 N.M. 211. Here, there is no impermissible double taxation, since separate taxes – the MHH GRT and CHH GRT – have been imposed by different taxing powers – the respective city and county.

IV. CONCLUSION

For the foregoing reasons, the Business Plaintiffs’ claims should be dismissed for lack of subject matter jurisdiction. In addition, the Court should dismiss entirely the Third Amended Complaint and the Complaint in Intervention for failure to state any claims upon which relief can be granted.

Respectfully Submitted,

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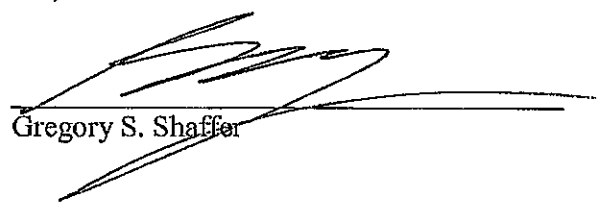
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of July, 2015, I caused to be filed the foregoing Brief in Support of Joint Motion to Dismiss Pursuant to Rule 1-012(B)(1) and (6) NMRA for Lack of Subject Matter Jurisdiction and Failure to State a Claim Upon Which Relief Can Be Granted electronically through the Odyssey File & Serve system, which caused all counsel of record to be served.


Gregory S. Shaffer

GREGORY S. SHAFFER

Application for Judicial Vacancy on the First Judicial District Court
List of References

| <u>Reference</u> | <u>Relationship to Applicant</u> |
|---|---|
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| Michael F. Armstrong, Esq. McLaughlin & Stern, LLP 260 Madison Avenue New York, NY 10016-2404 Tele: 212.448.1100 Fax: 212.448.0066 Email: marmstrong@mclaughlinstern.com Webpage: http://www.mclaughlinstern.com/attorneys/counsel/armstrong-michael-f/ | Until he joined another firm, Mr. Armstrong was a partner at Kirkpatrick & Lockhart LLP when I was an associate at that firm. |
| John J. Sullivan, Esq. Hogan Lovells US LLP 875 Third Avenue New York, NY 10022 Tele: 212.918.3635 Fax: 212.918.3100 Email: john.sullivan@hoganlovells.com Webpage: http://www.hoganlovells.com/john-Sullivan | Mr. Sullivan was a partner at Kirkpatrick & Lockhart LLP when I was an associate at that firm. |
| Carolyn A. Wolf, Esq. 2955 Camino Piedra Lumbre Santa Fe NM 87505-5379 Tele: 505.490.0349 Email: cawolf2955@gmail.com | Ms. Wolf was Chief Counsel at the Taxation and Revenue Department when I was Deputy Chief Counsel at that Department. Before her retirement, she also represented Santa Fe County in two lawsuits while I was Santa Fe County Attorney. |

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Application for Judicial Vacancy on the First Judicial District Court
List of References

| <u>Reference</u> | <u>Relationship to Applicant</u> |
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| Paula Tackett, Esq. 7459B Old Santa Fe Trl Santa Fe NM 87505-9578 Tele: 505.803.7084 Email: ptackett13@gmail.com | Until her retirement, Ms. Tackett was the Director of the Legislative Council Service when I was counsel to the Department of Finance of Administration. |
| Steven Kopelman, Esq. Executive Director New Mexico Association of Counties 444 Galisteo St Ste A Santa Fe NM 87501-2648 Tele: 505.983.2101 Fax: 505.983.4396 Email: skopelman@nmcounties.org | Mr. Kopelman has been the Executive Director of the New Mexico Association of Counties throughout my tenure as Santa Fe County Attorney. I interact with Mr. Kopelman on legislative initiatives, complex questions of law applicable to counties, and litigation involving Santa Fe County. |
| Dannette K. Burch 2812 Pintado Circle Santa Fe NM 87507 Tele: 505.690.1198 | Ms. Burch was the Deputy Secretary of Finance and Administration/State Budget Division Director and Secretary of Finance and Administration when I was counsel to the Department of the Finance and Administration during the Richardson administration. |
| Anthony I. Armijo, MBA, CPA, CGMA, CGFM 14 Via Secunda Santa Fe NM 87507 Tele: 505.930.2077 | Mr. Armijo was the Financial Control Division Director when I was counsel to the Department of Finance and Administration during the Richardson administration. |